

REMARKS

Claims 7 through 9 and 15 through 17 remain pending in this application. In response to the Office Action dated December 9, 2004, claims 7 through 9 and 15 through 17 have been amended; and claims 1 through 6, 10 through 14, 18 and 19 have been cancelled. Care has been taken to avoid the addition of new matter. Favorable reconsideration of the application as amended is respectfully solicited.

Claims 7 through 9 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. patent application publication 2004/0120494 (Jiang), as set forth at pages 2-6 of the Office Action. Claims 15 through 17 were rejected under 35 U. S. C. § 103(a) as being unpatentable over Jiang in view of U.S. patent application publication 2004/032435 (No), as set forth at pages 8-15 of the Office Action. No has been relied upon for disclosing an audio content server coupled to a telephone network.

Claims 7 through 9 and 15 through 17 have been rewritten in independent form to include all limitations of their respective, now cancelled, parent claims. Claims 7 and 15 specifically require that a ringback audio presentation is selected in accordance with called subscriber identified criteria that is related to the identity of the caller. Claims 8 and 16 specifically require that a ringback audio presentation is selected in accordance with called subscriber identified criteria that is related to the geographical location of the caller. Claims 9 and 17 specifically require that a ringback audio presentation is selected in accordance with called subscriber identified criteria that is related to the time of day of the incoming call. As a basis for the rejections of claims 7 through 9 and 15 through 17, teachings of Jiang have been relied upon for disclosing these claimed features.

The Jiang application was filed December 10, 2003, subsequent to the filing date, October 31, 2003, of the present application. A provisional application was filed by the Jiang inventors on

Application No.: 10/697,161

December 10, 2002. The Jiang published application, which is the reference relied upon for the rejections of the remaining pending claims, is entitled to the benefit of the filing date of the provisional application only for disclosed subject matter that is contained in the provisional application. Subject matter in the Jiang reference that is not supported by the provisional application is not entitled to the benefit of the earlier date.

Applicant has obtained a copy of the Jiang provisional application from the PTO website. It is assumed that the Examiner has access to this document. The provisional application has been carefully considered. The provisional application does not disclose that a ringback audio presentation is selected in accordance with called subscriber identified criteria that is related to the identity of the caller, geographical location of the caller, or time of day of the incoming call, all as required by the remaining claims. In the absence of support for this claimed subject matter in the provisional application, the Jiang published application does not qualify as a prior art reference for claims 7 through 9 and 15 through 17 under 35 U. S. C. § 102.

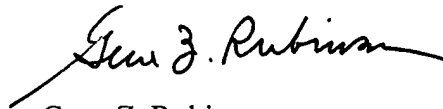
Accordingly, withdrawal of the rejections and allowance of the application as now amended are respectfully solicited. To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection

Application No.: 10/697,161

with the filing of this paper, including extension of time fees, to Deposit Account 500417 and
please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

A handwritten signature in black ink, appearing to read "Gene Z. Robinson", with a long horizontal flourish extending to the left.

Gene Z. Robinson
Registration No. 33,351

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 GZR:lnm
Facsimile: 202.756.8087
Date: March 9, 2005

**Please recognize our Customer No. 20277
as our correspondence address.**

WDC99 1052619-1.050108.0078